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Practice and Procedure before the Railroad Commission of California

THE rise of administrative boards and commissions vested with extensive powers and jurisdiction has in recent years opened to the bar a broad and still rapidly widening field of effort unknown to and unimagined by lawyers of earlier generations. Whereas in former times the average lawyer may have contented himself with a general familiarity with court procedure, plus a more or less accurate knowledge of a few major branches of the law, such an equipment will no longer suffice to carry him through his day's work. Today, in addition to his basic grounding in the law, he must obtain at least some familiarity with the work and practice of a multitude of administrative agencies. He must learn something of the activities of the federal tax administration, the Interstate Commerce Commission, the state Industrial Accident Commission, divers municipal planning and zoning bodies, the insurance, banking, real estate, and corporation commissions, and the railroad or utilities commission of his state—not to mention many lesser agencies of like nature. He must inform himself as to their powers, their statutory background and their methods of procedure. And this because—whether we like it or no—the operations of one or more of these new agencies of governmental effort impinge at times upon the life and activities of every citizen, and few lawyers escape at least the occasional necessity of presenting a client's interests before them.¹

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¹ For a series of scholarly discussions on the general subject of the development of these administrative agencies, see *The Growth of Administrative Law*, a series of addresses before the Bar Association of St. Louis by Ernst F. Freund, Robert V. Fletcher, Joseph E. Davies, Cuthbert W. Pound, John A. Kurtz and Charles Nagel, St. Louis, Thomas Law Book Company, 1923.

It should be noted that the present article is not intended as a treatise upon the subject of the regulation of public utility enterprises in its broader aspects, but merely as an outline of the methods of practice and procedure

The very features of our industrialized society which have occasioned the creation of these administrative agencies have, in the field of procedure, forced into the discard many practices hitherto considered fundamental because of long usage in older tribunals. Not the least, therefore, of the many problems which have had to be faced in connection with the development of these bodies has been that of accustoming an ancient and conservative profession to new and seemingly radical procedural methods. While practices vary somewhat with the particular board or commission under consideration, they are generally distinguishable from the traditional procedure of courts of law by a certain informality, and by the virtual abrogation of a number of the rules of evidence which lawyers have long considered somewhat in the nature of "cornerstones of justice." The feature of informality is well illustrated by the comparatively small part played by formal pleadings in cases arising before these bodies,² while their almost callous disregard of the rule forbidding the admission of hearsay testimony is the phase of their activities most exasperating—not to say shocking—to a bar steeped in common-law doctrines of evidence.

Largely because of its imposing background of over 18,000 formal decisions, the Railroad Commission stands out in California as the administrative tribunal possessing the most highly developed procedural mechanism. Its powers—derived in large part from the state constitution itself—involve the enforcement of a number of important statutes,³ and embrace the general regulation and control of public utilities throughout the state—including common carrier steam, interurban, and street railroads, express, gas, electric, water, steamheat, pipe line, telegraph, and telephone companies, wharfingers,

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which have been evolved by a single regulatory body. For a discussion of some of the more general problems which confront such bodies see *Public Utility Regulation*, a compilation of essays on various phases of this subject edited by Morris L. Cooke, of Philadelphia, The Ronald Press, 1924, the dedication of which reads: "To the late John M. Eshleman, of California, Railroad Commissioner, in appreciation of the talent, the character and the public devotion he brought to bear on the problem of regulation."

² John M. Eshleman, first president of the Railroad Commission of California, once declared that "a two-cent stamp starts a rate case." See below under head of "Informal Complaints."

³ Among these statutes are the Public Utilities Act (Cal. Stats. 1911, Extra Session, p. 18; re-enacted Cal. Stats. 1915, p. 115, as amended); the so-called "Auto Stage and Truck Transportation Act" (Cal. Stats. 1917, p. 330, as amended); the so-called "Water Company Act" (Cal. Stats. 1913, p. 84, as amended); and the Food Warehousemen Act (Cal. Stats. 1919, p. 314, as amended). The constitutional provisions under which these statutes giving jurisdiction to the Railroad Commission have been enacted include Cal. Const. of 1879, Art. IV, § 33; Art. XI, § 19; Art. XII, §§ 17, 19, 20, 21, 22, 23, 23a, and Art. XIV, §§ 1 and 2.

warehousemen, operators of vessels on inland waters, and automobile truck and stage operators. The rates, service, rules, regulations, practices and financing of these enterprises are under the general supervision of this body and while it is not their manager and does not in any manner guarantee the success of their operations it may, in a certain sense, be likened to the midwife who attends their birth, the guardian who, in the interest of the public weal, watches over their life activities, and the functionary who, in case of demise, sees to it that the remains are not disposed of in an unlawful manner.

SCOPE OF RAILROAD COMMISSION POWERS

This Commission is the outgrowth of the earlier Board of Railroad Commissioners, which was set up in 1880 pursuant to a mandate contained in the new constitution of the previous year, and which languished through thirty years of quite innocuous impotence until, in 1911, it was by constitutional amendment invested with new and vastly increased powers. Its membership was increased from three to five, and its authority was extended to include the present broad regulation of public utilities generally, whereas the jurisdiction of the earlier board had been limited to comparatively minor authority over steam railroads.

This body's main object and purpose is so to regulate the operations of the public utilities under its control as to assure the best quality and greatest quantity of service to all consumers, without discrimination, at the lowest reasonable rates consistent with the best interests both of the public and the utilities. As a recent writer on railroad regulation has put it:

"The question is: how can the public secure satisfactory transportation service at the minimum cost, and still deal fairly with those who have supplied the necessary capital?" (Jones, "Principles of Railway Transportation," p. 284.)

Some appreciation of the nature of the extensive regulatory authority now exercised by this Commission is essential to an understanding of the procedural methods which it has evolved. Looked upon broadly its jurisdiction may be said to possess a fourfold aspect. It is primarily charged with (1) fixing rates and granting reparation for excess charges, and (2) supervising service and service conditions, including matters involving public safety and the prevention of unreasonable discrimination between public utility patrons. Incidental to these primary duties, and in aid of their execution, it is also charged with (3) controlling the financing of public utilities

and (4) regulating their competition one with another.⁴ In connection with its jurisdiction over rates, the Railroad Commission is called upon to make valuations of public utility properties and to fix the amounts which shall be legally chargeable for services rendered or commodities sold to the public. It may also grant reparation in instances where excessive or unreasonable charges have been collected. Its authority to supervise the service rendered by public utilities includes not only the power to require adequate service from existing facilities, but also to direct the furnishing of such additional facilities or plant extensions as may prove necessary or proper because of the development of the community. Among its important functions in this connection is the prevention of unjust discrimination on the part of utilities against any of their patrons, and also in the interest of protecting public safety and the safety of patrons and employees of public utilities it generally supervises safety conditions upon their systems. The Commission's jurisdiction over the financing of public utilities includes the regulation of the issuance of all types of securities, such as stocks, bonds, notes, and other evidences of interest or indebtedness, together with general authority over mortgaging, leasing, or otherwise disposing of or encumbering properties used and useful in the public service. Finally, in the field of regulation of competition, the Railroad Commission is charged with the duty of issuing certificates of public convenience and necessity in accordance with the principle—now quite generally recognized—that in the case of those types of public utilities which are, in fact, "natural monopolies," a recognition of this fact through protection coupled with careful regulation frequently results in advantages to the public which could not be had under unregulated competition and its resultant duplication of investment.⁵

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⁴In this connection the state Supreme Court in the first and most important case dealing with the Railroad Commission and its jurisdiction said that its regulatory power "falls into three natural subdivisions: (1) The right to regulate tolls and charges, to the end that fair compensation may be returned and excessive charges forbidden; (2) The right to prevent discrimination on the part of the public utility directed against those who employ it, or make use of its agency or the commodity which it furnishes; (3) The right to make orders and to formulate rules governing the conduct of the public utility to the end that its efficiency may be built up and maintained and the public be accorded desirable safeguards and conveniences." *Pacific Tel. & Tel. Co. v. Eshleman* (1913) 166 Cal. 640, 137 Pac. 1119.

⁵In this connection see *Oro Electric Corp. v. Railroad Commission* (1915) 169 Cal. 466, 147 Pac. 118; *Public Utilities Commission v. Garviloch* (1919) 54 Utah, 406, 181 Pac. 272, P. U. R. 1919E 182; *Motor Transit Co. v. Railroad Commission* (1922) 189 Cal. 573, 209 Pac. 586. See also *Pacific Gas and Electric Co. v. Great Western Power Co.* (1912) 1 California Railroad Commission Report, 203 (hereinafter cited 1 C. R. C. 203); and in re *Oro Electric Corp.* (1913) 2 C. R. C. 748 and (1913) 3 C. R. C. 429.

It is evident that the performance of these varied duties brings into play many functions which differ materially from the traditional function of the courts to apply the principles of law—whether statutory or common-law in nature—to specific controversies between known and specified parties. While some of its functions (such as the granting of reparation) have been declared to be “judicial” in character, and while others (such as acting on formal complaints in controversies over particular issues) are frequently said to be at least of a “quasi-judicial” nature, rate-making, one of the primary functions of this Commission, is generally conceived to be “legislative” in character,⁶ and many of its other duties also look toward the regulation of future acts or operations rather than to the mere determination of present controversies.⁷ Even its formal decisions are but incidents in a continuous and continuing effort, the single end of which is to procure for the public the best quality and greatest quantum of service for the most reasonable expenditure in the way of rates and charges. Necessarily, therefore, its procedure differs materially from that of courts of law, and a recent writer on this subject, who speaks of the administrative field as “a department of law not yet worn smooth by precedent,” declares:

“The crucial qualities of a common-law court which are absent from the administrative tribunals are at least three, two of them being procedural and one substantive. Administrative tribunals are not bound by the procedural safeguards which mould the outcome of an action at law; more specifically, they are, in the first place, not bound by the common-law rules of evidence, and in the second place, parties to proceedings before them do not have the benefit of a jury trial. The substantive difference between the administrative procedure and the procedure at law is that the administrative tribunals decide controversies coming before them, not by fixed rules of law, but by the application of governmental discretion or policy.”⁸

ORGANIZATION OF STAFF

Under the virile and competent leadership of John M. (“Jack”) Eshleman, the virtually new Commission created in 1911 at once

⁶ *Prentiss v. Atlantic Coast Line* (1908) 211 U. S. 210, 29 Sup. Ct. Rep. 67; *Southern Pacific Co. v. Railroad Commission* (1924) 194, Cal. 734, 231 Pac. 28.

⁷ For a discussion of the nature of the administrative functions exercised by the Railroad Commission see *Stratton v. Railroad Commission* (1921) 186 Cal. 119, 198 Pac. 1051.

See also John Dickinson, *Administrative Justice and the Supremacy of Law* (Harvard Studies in Administrative Law No. 2, Harvard University Press, 1927) for a critique of this problem and a criticism of this nomenclature, which is used here merely for want of a better.

⁸ Dickinson, *op. cit.*, p. 35.

set to work to develop machinery for the proper administration of its duties. Its first task was to create a staff of expert assistants, which it organized in a manner broadly corresponding to the various types of regulation which had been entrusted to it. As its work has increased this staff has been enlarged, but its general organization remains the same. Under the direction of a chief engineer are a number of assistant engineers, organized in divisions which consider those problems which involve the rates and service of gas and electric corporations, telegraph and telephone corporations, domestic and irrigation water service corporations, and transportation companies by rail, respectively. The transportation engineers also advise the Commission upon problems of grade-crossing protection and elimination, and the chief engineer maintains a separate division charged with the duty of valuing utility properties. Independent of the engineering department, a rate expert and his assistants handle rate matters involving railroads; an automobile stage and truck department concerns itself with those important public service enterprises; a financial expert, together with a staff of accountants, considers problems involving the financing of public utilities, and the Commission's attorney and his assistants conduct all litigation to which it is a party, and also advise it generally upon matters of a legal nature.

In addition, a staff of examiners is maintained to assist the Commission in holding formal hearings, and a clerical force, under the Commission's secretary, concerns itself with the official docket, the handling of informal complaints, the preparation of stenographic reports of hearings, the filing of documents, and divers related matters.

RULES OF PROCEDURE

The Public Utilities Act, which was enacted at the special session of the Legislature of 1911 just subsequent to the adoption of the constitutional amendments above-mentioned, provided that hearings and investigations of the Commission should be governed by that Act "and by rules of practice and procedure to be adopted by the Commission,"⁹ and in order that the work of its large staff might

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⁹ Public Utilities Act, § 53. In the case of *Saunby v. Railroad Commission* (1923) 191 Cal. 226, 215 Pac. 904, it was declared that under the constitutional provisions governing it the Railroad Commission is vested with "a very large, if not an almost unlimited, discretion, with relation to the inception, order and conduct of proceedings before it." Such power is subject only to the provision of the federal Constitution declaring that no

be carried forward in an expeditious manner, and that matters submitted to it might be handled efficiently and in accordance with good practice, one of the first acts of the new Commission was the promulgation of Rules of Procedure.

The chief end sought by the Commission in these Rules of Procedure was the complete elimination of demurrers and such other pleas or process as might be intended solely for purposes of delay, as well as the establishment of a simple and speedy method for bringing to issue such formal proceedings as should come before it. The rules were published on March 13, 1912, to take effect March 23, the date on which the new Public Utilities Act became effective, and in all their essential features they continue in force today.¹⁰ By their terms formal proceedings before the Commission are segregated into two general classes—applications and cases—matters arising under each category being given serial numbers, in the order of their receipt and filing. All documents later filed in any such proceedings are identified by and filed under these serial numbers.

person may be deprived of life, liberty or property without due process of law. See Cal. Const. 1879, Art. XII, §§ 22 and 23.

¹⁰ Mr. Max Thelen, then attorney for and later member and president of the Commission, who had assisted in drafting the Public Utilities Act, was largely responsible for these Rules of Procedure. In a letter to the writer dated April 15, 1927, he recalls the meeting of attorneys and other interested persons called by the Commission on March 11, 1912, to consider the proposed rules. A large proportion of those present protested vociferously against the elimination of demurrers, motions to strike and like dilatory process, until a prominent member of the San Francisco Bar rose to remark that all that lawyers appear to do nowadays is four things: "First, do nothing; second, try to prevent the other fellow from doing anything; third, secure continuances; and fourth, collect their fees." The next day the San Francisco Call published a series of interviews with members of the Bar and the judiciary most of whom expressed their dissent from the idea of eliminating the "constitutional right" of lawyers to delay, but the Commission put the proposed rules in effect, and they have proven eminently practical in their operation. Seldom is complaint made today of the lack of dilatory pleas before the Commission.

In his letter, Mr. Thelen goes on to say: "It has always been interesting to me to note that while the legislatures of our various states have retained tenacious control of the practice and procedure of the state courts—very greatly to the disadvantage of such practice and procedure—they have been quite ready to grant to administrative tribunals, such as our Railroad Commissions and our Industrial Accident Commissions, the right to adopt their own rules of practice and procedure. This has been done notwithstanding the bold disregard by these administrative tribunals of the old court rules of practice and procedure inherited from England at a time when the practice and procedure of the courts in that country was in its most unsatisfactory condition. It has always seemed to me that the public and their representatives might well take a leaf from the experience of these administrative tribunals and finally confer upon the courts the power to prepare their own rules of practice and procedure. In this state, this power might well be delegated to the new Judicial Council."

"Applications" involve requests on the part of public utilities to issue securities, enter new territory, increase rates, or the like, and included in this category are requests for authority to create new grade crossings or to separate the grades of crossings over railroads, petitions for certificates of public convenience and necessity to engage in public utility enterprises, applications by public bodies for valuations of public utility properties for purposes of condemnation or purchase and requests for the fixing of damages to neighboring property through the separation of grades at railroad crossings. "Cases," on the other hand, are initiated by formal complaint directed against one or more specified public utilities requesting orders requiring the rendition of new, different or extended service, or the reduction or modification of rates or the fixing or filing of particular rates, rules or regulations. Investigations upon the Commission's own motion, when formal in character, are classified as cases.

The Rules of Procedure (copies in pamphlet form are available upon request) prescribe general regulations for all formal proceedings, methods of obtaining subpoenas, particular rules for formal complaints and formal applications as well as for applications for authority to issue securities, to lease, mortgage or otherwise encumber the operative property of a utility and applications for certificates of public convenience and necessity, to increase rates, or to construct or alter grade crossings of railroads. Procedure on hearings and rehearings is set forth, together with rules governing the reception of documentary evidence. A series of suggested forms covering specific types of complaints and applications is appended, and while not obligatory, the use of such forms serves materially to expedite the work of the Commission as it assures the inclusion of all essential information at the outset.¹¹

INFORMAL COMPLAINTS

The subject of informal complaints, while generally and quite properly considered to concern one of the Commission's most important public functions, may here be disposed of briefly. In han-

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¹¹ While the Commission's purpose is at all times to follow and to require substantial compliance with its Rules of Procedure, the mere failure so to do will not render its order one in excess of jurisdiction or warrant a holding that the Commission has not "regularly pursued its authority," where it appears that no federal constitutional rights of the parties have been infringed by reason of such procedure. *Ghriest v. Railroad Commission* (1915) 170 Cal. 63, 148 Pac. 195.

dling such complaints the Commission acts as a friendly and impartial intermediary between public utilities and their patrons, and many thousands of these informal matters, involving disputed bills, service extensions, claims of faulty meters, and numerous other phases of utility service, are acted upon each year.¹² In order to start the machinery of this department in motion nothing more is necessary than a letter stating the alleged difficulty. Upon the receipt of such a letter—or, indeed, of a mere oral complaint—the utility in question is informed of the matter and is requested to advise the Commission as to the facts and as to its position. Ordinarily an amicable solution of the difficulty is obtained, either by correspondence or through a personal visit on the part of some member of the Commission's staff to the locality in question, but in case such a solution proves impossible, the complaining party is advised of his right to initiate formal proceedings.

FORMAL CASES

Formal complaints may be filed by any person, organization, firm or corporation whose rights are involved, save only complaints as to the reasonableness of *rates* of gas, electric, water or telephone corporations, as to which the proceeding must be initiated by a petition signed by the mayor or other head of the governing body, or a majority of the council or other legislative body of the municipality in question or a group of not less than twenty-five consumers or prospective consumers of the service.¹³ The Commission requires that complaints set forth the acts or things done or omitted to be done by the defendant public utility which is claimed to be in violation of law or of any order or rule of the Commission. They must definitely and concisely set forth the situations complained of and the relief desired, and must be signed by each complainant, at least one of whom must add his verification. They should be entitled "Before the Railroad Commission of the State of California, *John Doe*, Complainant, versus *Richard Roe*, Defendant," and copies equal

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¹² See Cooke, *op. cit.*, for a discussion of the importance of this branch of regulatory practice.

¹³ Public Utilities Act, § 60. See, in this connection, *Monahan v. Pacific Gas & Electric Co.* (1914) 4 C. R. C. 231; *Home Telephone & Telegraph Co. v. Pacific Tel. & Tel. Co.* (1915) 6 C. R. C. 124, 128; and *Roseville v. Pacific Gas & Elec. Co.* (1916) 9 C. R. C. 228. In *Los Molinos etc. Co. v. Coneland Water Co.* (1915) 8 C. R. C. 24, 27, since the requisite number of consumers could not be secured to raise this issue, the Commission instituted an investigation on its own motion into the rates in question.

to six more than twice the number of defendants must be filed with the Commission.

Upon receipt of such a complaint, the Commission immediately serves a copy upon the defendant utility,¹⁴ and a period of five days is allowed in which it may either satisfy the matter complained of or point out such defects, if any, in the complaint as it may consider material. This pleading is nearest in character to a demurrer which is allowable under the Commission's rules. If the objections so made be deemed meritorious, the Commission requires amendment of the complaint to eliminate the objectionable features. If, however, no such document is filed within the appointed time, or if the Commission be of the opinion that the alleged defects are not of sufficient import to vitiate the complaint or to require amendment (mere minor defects are not so considered), the utility is formally served with an order to satisfy or answer the complaint. If it be then satisfied, it is dismissed, but if an answer is filed the matter is assigned to one or more commissioners, or to an examiner, and a date is set for hearing. It is specifically provided in the Commission's rules that the filing of an answer is not of itself deemed an admission of the sufficiency of a complaint, but that a motion to dismiss upon any relevant ground may be made at the time of hearing.¹⁵ The answer must be signed and verified, and, as in the case of all other formal documents, the addresses as well as the names of all parties and attorneys are required to be appended.

Upon the date set for hearing, the complainant and the utility may appear in person or by attorney and present any relevant testimony as to the matters in question, and all other parties properly interested in the subject-matter of the proceeding may appear and intervene under liberal rules requiring only that the issues as joined in the pleadings be not enlarged by such intervention.¹⁶ It has been

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¹⁴ This is one of the two instances in which the Commission itself serves formal documents on parties to proceedings before it. In all other cases the party desiring to file the pleading or other formal document must show service on the opposing party or parties before filing the same. The other instance wherein the Commission itself serves a pleading is that of applications under Public Utilities Act, § 47b, for valuation of public utility properties for purposes of condemnation or sale. See below under heading *Special Proceedings*.

¹⁵ It is to be noted that by statute it is provided that no motion against a complaint shall be entertained by the Railroad Commission upon the ground of misjoinder of causes of action or misjoinder or nonjoinder of parties. Moreover, the Commission is not required to dismiss any complaint because of the absence of direct damage to the complainant. Public Utilities Act, § 60.

¹⁶ See *In re L. A. Monroe* (1923) 24 C. R. C. 93, 94; and *Smart et al. v. Pacific S. S. Co.* (1920) 19 C. R. C. 72, 74.

the consistent policy of the Railroad Commission to hold hearings wherever possible in the locality served by the public utility in question, or, in the case of a utility serving a wide area, the locality to which the complaint relates, in order that witnesses may be inconvenienced as little as possible. Notices of such hearings are sent to the parties and to such other persons or organizations as are named as being interested, and stenographic reports of hearings are prepared by members of the Commission's reporting staff, copies being sold to interested parties at rates fixed by statute.

While complainants before the Commission are expected to make complete showing of the matters which they have alleged, the Commission whenever possible directs some member of its staff to investigate the situation prior to the hearing, and in many instances reports are made setting forth the results of such investigations, the Commission representatives taking the witness stand and being subject in all respects to examination and cross-examination as in the case of other witnesses.¹⁷ Upon the conclusion of the hearing, or of any adjourned hearing, the Commission takes the complaint under submission and thereafter issues its order, after which any interested party may file a petition for rehearing, and, if the same be denied, may apply to the state Supreme Court for a writ of certiorari or review, or, in a proper case, may proceed in the federal district for an injunction. Procedure in such matters will be discussed below under the subject of "Appeal and Review."

If the Commission's jurisdiction to hear and determine the issues raised in any complaint be questioned by motion to dismiss, by special appearance or otherwise, it is its custom to take testimony or to hear argument on such jurisdictional matters at the outset, and if they appear to be of sufficient weight to render an immediate ruling unjustified, they are ordinarily taken under submission either on the argument as made or upon briefs, the hearing being continued to allow for their careful consideration. If, upon such consideration, the Commission be of the opinion that it does not, in point of law, possess jurisdiction over the matter in question, it issues its order of dismissal, which is, of course, subject to review by the State Supreme Court. If, on the other hand, the Commission be of the opinion that it has jurisdiction to hear and determine the case upon its merits, it sets the matter for further hearing and announces

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¹⁷ See *City of Palo Alto v. Palo Alto Gas Co.* (1913) 2 C. R. C. 300, 312; *In re Murray and Fletcher* (1913) 2 C. R. C. 464, 518; *In re Marin Municipal Water District* (1915) 6 C. R. C. 507, 515, and *In re Tujunga Water and Power Co.* (1915) 7 C. R. C. 580, 586.

from the bench its ruling upon the jurisdictional question. After hearing, it issues its decision dealing both with the jurisdictional issues and those on the merits.¹⁸

Since it has been determined that no proceeding will lie before the Commission for the sole purpose of deciding whether or no a given enterprise is a public utility and therefore subject to its regulatory jurisdiction,¹⁹ no appeal by writ of review will lie until such final decision on the merits has been issued in a case where the Commission so decides to assume jurisdiction. Because of this fact, in cases where jurisdictional questions of moment have been presented and it appeared that a hearing on the merits would consume considerable time and money, the Commission has occasionally dismissed proceedings on jurisdiction, in order that the questions raised might be made the subject of judicial determination in advance of hearing on the merits. In such instances, the matter is brought directly to the attention of the Supreme Court by petition for writ of mandate, and that court has, on several occasions, approved of this procedure on grounds of expediency and economy.²⁰

INVESTIGATIONS ON THE COMMISSION'S OWN MOTION

It frequently happens that matters come to the attention of the Railroad Commission, which in its opinion, require investigation on its own motion. If informal inquiry fails to accomplish the desired result, the Commission is empowered by statute to institute formal investigations. Such proceedings are classified on the Commission's docket as "Cases," and are initiated by formal orders setting forth the matters in question and assigning them for hearing.²¹

Procedure in such matters is similar to that involved in the case of other formal proceedings. Ordinarily the Commission receives testimony as to the matters under investigation through some member or members of its staff, or through other witnesses under subpoena. The public utility affected, and any interested person, may

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¹⁸ Recent instances of such procedure are *Smith v. San Dieguito Water Co.* (1926) 29 C. R. C. 87, 95, and *California Transit Co. v. Southern Pacific Co.* (1927) 29 C. R. C. 664, 666.

¹⁹ *Holabird v. Railroad Commission* (1916) 171 Cal. 691, 154 Pac. 831.

²⁰ See for examples of this procedure *Civic Center Assn. v. Railroad Commission* (1917) 175 Cal. 441, 166 Pac. 351; *Hollywood Chamber of Commerce v. Railroad Commission* (1923) 192 Cal. 307, 219 Pac. 983, and *East Bay Municipal Utility District v. Railroad Commission* (1924) 194 Cal. 603, 229 Pac. 949.

²¹ See *Mordecai v. Madera Canal & Irrigation Co.* (1913) 3 C. R. C. 985, 995, and *In re Sidney Smith* (1925) 26 C. R. C. 359, 360.

appear and bring forward such testimony and argument as they desire, the matter then being submitted for decision. Orders issued in such investigations are subject to review under the same statutory provisions which apply to other formal orders or decisions of this Commission.

FORMAL APPLICATIONS

Formal applications are handled in a similar manner. Upon receipt, if filed in conformity with the Commission's rules, they are set down for hearing before one or more commissioners or an examiner, save that, as to certain matters, it is provided by statute that the Commission may act *ex parte*. In such cases, unless in its opinion a hearing is required by the public interest, an order granting or denying the application, or granting the same in part, is ordinarily issued after investigation into the situation by the Commission's staff. It should be added that orders denying applications *ex parte* are extremely rare, a hearing being ordinarily granted before such action is taken.

In cases which involve rates, or important classes of service, the applicant is frequently directed to post and publish a notice of the hearing in some paper of general circulation in the locality affected. He may even be required to send a written notice of the hearing to each consumer.

Upon the hearing, testimony is taken as in the case of complaints, and after submission the Commission issues its order in the matter. Any party may apply for a rehearing, and, if this be denied, may petition the state Supreme Court for a writ of review, or proceed, in a proper case, in the federal courts, as more fully considered below under the title "Appeal and Review."

Certain special types of application proceedings are provided by statute and must be considered in this connection.

SPECIAL PROCEEDINGS IN THE NATURE OF APPLICATIONS

More important among these special proceedings are these involving the powers vested in the Commission to establish valuations of public utility properties on request of municipal corporations and certain other public bodies for the purpose of the condemnation or purchase of such properties, and those which involve the powers granted to this body to supervise the creation of crossings over railroads at grade and to direct the separation of grades of such crossings and apportion the cost thereof among the interested parties.

In addition, on proper application, the Commission may fix the amounts to be paid to adjacent property owners as just compensation for any damages sustained by their property by reason of such separation of grades, or for property taken in connection with such action.

Jurisdiction over the first of these special types of proceedings—i.e., the valuing of public utility properties on application of public bodies for condemnation or purchase—was vested in the Railroad Commission by a new section of the State Constitution adopted in 1914,²² by which it was provided that applications for such valuation might be made by "the state or any county, city and county, incorporated city or town or municipal water district." This section was adopted primarily for the purpose of validating certain provisions already contained in the Public Utilities Act, and the list of public bodies which might thus apply was held to be exclusive in the case of *East Bay Municipal Utilities District v. Railroad Commission*.²³ In 1924, however, an amendment to the constitutional provision added the words "irrigation district, or other public corporation or district" to the list of proper applicants for such service.

The procedure to be followed in such proceedings is set forth in detail in the Public Utilities Act, section 47b. Applications of this nature are grouped into two classes: (1) Petitions of the first class, including those which set forth the intention of the political subdivision to acquire, under eminent domain proceedings, or otherwise, lands, property and rights of the public utility in question or some specified part thereof; and (2) petitions of the second class, which are those which set forth the intention of the political subdivision in question to initiate such proceedings as may be required by law for the purpose of submitting to its voters a proposition to acquire such properties under eminent domain proceedings, or otherwise.²⁴ These applications must definitely set forth the name of the petitioning political subdivision, a description of the lands, property and rights, or of such portions thereof as the petitioner desires to acquire, and the names and addresses of all owners and claimants thereof, including each trustee and mortgagee under deeds of trust or mortgages, or a statement that such owners or claimants are unknown. This petition, which must be signed in the name of the petitioning political subdivision and must be verified by its presiding

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²² Cal. Const. 1879, Art. XII, § 23a.

²³ (1924) 194 Cal. 603, 229 Pac. 949.

²⁴ See *In re City of San Diego* (1916) 10 C. R. C. 3, 5.

officer or by the secretary or clerk of its governing body, must include the prayer that the Commission "fix the just compensation which shall be paid by the political subdivision, under the law, for such lands, property and rights, or said part or portion thereof."

Upon the filing of such an application the Railroad Commission issues its order to show cause, as required by the statute, setting forth in brief the matters contained in the application, and directing the named owners or claimants of the properties in question to appear upon a date certain and show cause, if any they have, why the Commission should not proceed to hear the petition and fix the just compensation to be paid for the described properties. This order, together with a copy of the application, is then served upon the utility in question and upon each named owner or claimant, and if upon the hearing thereof no objection be made by any such party, or if the Commission be of the opinion that the objections made are not of sufficient weight to vitiate the proceedings, the matter is set down for hearing and the Commission proceeds to fix the value of the properties for the purposes above mentioned. The extra costs of such work on the part of the Commission and of its staff are payable by the petitioning public body upon demand by the Commission.

A number of minor provisions are included in the section in question dealing with the minutiae of procedure and the methods by which applicants may obtain findings covering properties added during the pendency of the proceedings and by which utilities may recover from public bodies which fail to proceed to condemnation in the courts their proper costs in connection with the proceeding had before the Commission.²⁵

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²⁵ In connection with this general subject see *Marin Water & Power Co. v. Railroad Commission* (1916) 171 Cal. 706, 154 Pac. 864; *Marin Municipal Water District v. Marin Water & Power Co.* (1918) 178 Cal. 308, 173 Pac. 469; *Marin Municipal Water District v. North Coast Water Co.* (1918) 178 Cal. 324, 173 Pac. 473; *Marin Municipal Water District v. Marin Water & Power Co.* (1919) 45 Cal. App. 270, 187 Pac. 764; *Pacific Gas & Electric Co. v. Devlin* (1922) 188 Cal. 33, 203 Pac. 1058; and *East Bay Municipal Utility District v. Railroad Commission* (1924) 194 Cal. 603, 229 Pac. 949. In addition, consult objections by *Pacific Gas & Electric Company* and *Great Western Power Company* to the jurisdiction of the Railroad Commission to value their electric properties in the City and County of San Francisco upon application by that city and county, and the statement of the Railroad Commission overruling said objections, to be found in the transcript of the record of Applications 9767 and 9768, now (1927) pending before the Railroad Commission.

In this connection see *In re City of Redding* (1919) 17 C. R. C. 98 (in which the acquisition of the properties in question followed the Commission's decision) and *In re City of Marysville* (1927) 29 C. R. C. 97, in which it was determined by the votes not to proceed to condemnation.

Procedure with relation to the second class of these special proceedings, i.e.—those involving grade crossings over railroads and the separation of grades at crossings of public highways and railroads or street railroads—is also set forth in detail in the Public Utilities Act, section 43. It is there provided that no public road, highway or street shall be constructed across the track of any railroad corporation at grade nor shall certain other grade crossings be constructed unless the Commission shall have first given its permission, and it is further provided that the Commission shall have power to determine the manner, the particular point of crossing and the terms of installation, operation, maintenance, use and protection thereof, and to alter, relocate or abolish any such crossing, and also to require the separation of grades at any present or future grade crossing, and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of the grade crossing or the separation of grades at any grade crossing shall be divided between the railroad or street railroad and the public bodies affected. In this connection it is provided that the Commission may designate the state or some one of the political subdivisions or corporations involved as the party which shall do the actual work, and may prescribe the manner in which the other parties shall reimburse it for the portion of the expense of the work which falls to them. In its order authorizing the creation of a crossing at grade or directing the separation of grades at any crossing, the Commission ordinarily fixes the proportion which shall be paid by each of the parties involved by percentage rather than in any fixed sum of money, because estimates are not completely accurate and actual expense can only be ascertained after the event. In certain instances, the Commission reserves the right to reopen such matters where it seems to be probable that new conditions may be expected to arise.²⁶

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²⁶ Such a provision in its order is probably unnecessary, in view of the provisions of Public Utilities Act, § 64, giving the Commission authority at any time to reopen matters that have come before it and to revoke, alter, or modify its prior orders therein. The inclusion of such a provision is, however, useful in that it definitely puts all parties concerned in such proceedings on notice that a change of situation may well be followed by further action on the part of the Commission.

In connection with the subject of grade crossing elimination, consult *City of Los Angeles v. Central Trust Co.* (1916) 173 Cal. 323, 159 Pac. 1169; *City of San Jose v. Railroad Commission* (1917) 175 Cal. 284, 165 Pac. 967; *Civic Center Association v. Railroad Commission* (1917) 175 Cal. 441, 166 Pac. 351; *City of Los Angeles v. Zeller* (1917) 176 Cal. 194, 167 Pac. 849; *City of San Bernardino v. Railroad Commission* (1923) 190 Cal. 562, 213 Pac. 980; *City of Oakland v. Schenck* (1925) 197 Cal. 456, 241 Pac. 545;

The third type of special proceeding authorized by the statute has for its end the fixing of such sums as should be paid as just compensation for property taken or damaged in connection with any particular separation of grades at railroad or street railroad crossings or in the creation or alteration of grade crossings. Procedure under this type of proceeding is specified in minute detail in the Public Utilities Act.²⁷ In this connection the Commission issues a final order of condemnation in a manner substantially similar to a court of law, whereas under the provisions for valuing properties for condemnation or sale purposes it merely fixes the fair value which is to be paid therefor. As a matter of practice, however, this jurisdiction has not proven to be of great importance, for, although proceedings for the valuation of properties for condemnation or sale and for the creation of grade crossings or the separation of grades at crossings have been numerous, in only one instance has the Commission actually exercised the peculiar jurisdiction thus accorded to it to value properties taken or damaged in connection with grade separations.²⁸

APPLICATIONS INVOLVING SECURITY ISSUES

One of the most important branches of the Railroad Commission's work is the supervision of the financing of public utility enterprises, and since this forms almost a separate field of practice it may be well briefly to consider the incidence of this branch of regulatory authority, its scope and certain practical aspects of procedure in matters concerning it.

The Public Utilities Act, section 52, provides that the power of public utilities to issue stocks, bonds and other evidences of indebtedness or ownership and to create liens on their property within this state is a special privilege, the right of supervision, regulation, restriction and control of which is vested in the state to be exercised as provided by law under rules and regulations prescribed by the Railroad Commission. It is further provided that the only purposes for which such evidences of ownership or indebtedness may be issued by any public utility are "for the acquisition of property, or for the construction, completion, extension or improvement of its

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City of Long Beach v. Pauli (1925) 197 Cal. 467, 241 Pac. 549; City of Red Bluff v. Southern Pac. Co. (1919) 44 Cal. App. 667, 187 Pac. 152.

²⁷ Public Utilities Act, § 43c.

²⁸ City of Bakersfield v. A. T. & S. F. Ry. Co. (1925) 26 C. R. C. 740. (Decision No. 15,125 in Case No. 1870.)

facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates or other evidences of interest or ownership, or bonds, notes or other evidences of indebtedness."

Notes payable at period of not more than twelve months after date may, however, be issued without the Commission's consent,²⁹ but may not be refunded without authority, and the Commission is given power to grant or refuse applications for the issuance of securities or to grant them in part only, severe penalties being provided for failure to comply with the Commission's orders.

It is not the purpose of this article to discuss the policies which have been evolved by the Railroad Commission in connection with this jurisdiction over the issuance of securities by public utilities. It is perhaps proper, however, to point out that misunderstandings have occasionally arisen on the part of members of the bar as to the scope of certain of the above mentioned purposes for which such securities may be issued. For instance, the Commission has taken the position that it cannot ratify the issuance of securities made without its authority and therefore void under the statute.³⁰ Moreover, not all expenditures, even though actually incurred by a public utility, may be funded by securities issued "for the reimbursement of its treasury." A tendency has been noted recently for lawyers to use this term "reimbursement" rather loosely to cover any form of indebtedness incurred by a utility, but it is clear that if such a company has borrowed money on short term notes, the issuance of securities against such claims cannot be for the purpose of "reimbursement" of its treasury. The application should, of course, be for the issuance of securities to pay current indebtedness rather than for the purpose of reimbursement of the treasury. Furthermore, applications involving the refunding of accounts payable should not be drawn on the theory of reimbursement of the treasury, and the Commission has definitely determined that no public utility is entitled to reimburse its treasury except for such amounts of earnings or

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²⁹ See *In re Tidewater So. Ry. Co.* (1913) 2 C. R. C. 1057, 1058; *In re Pacific Gas & Electric Co.* (1913) 3 C. R. C. 167, 169; *In re Mokelumne R. P. & W. Co.* (1913) 3 C. R. C. 926, and *South End Warehouse Co.* (1926) 28 C. R. C. 165, 166.

³⁰ See the Commission's Decision No. 13,732, *In re Olive Investment Co.* (1924) 25 C. R. C. 96.

donations as it can show have actually been reinvested in its property.³¹ If the funds with which the properties have been secured were borrowed funds, it is not proper to request authority to issue new securities for the purpose of reimbursing the treasury.

Moreover, the Commission frequently inserts conditions in orders allowing reimbursement of the treasury by which it requires the proceeds of the security issue in question to be kept in the business of the company rather than distributed as dividends. This is done where it appears that the earnings which have been taken from the treasury and invested represent moneys properly off-set by depreciation reserve.³² Otherwise, it would be possible for such a corporation in effect to distribute the funds so secured in the form of dividends out of its depreciation reserve.

It should further be noted that the Railroad Commission cannot authorize issuance of stock to cover operating losses or deficits or to refund notes which will represent operating deficit. It is fundamental that losses of this nature must of necessity be made up by assessments on outstanding stock rather than by the issuance of additional stock, which, when issued, would have no tangible addition to assets behind it.

Two further matters should be noted in connection with applications before the Railroad Commission for authority to issue securities. First, the Commission has taken the definite position that it will not receive mere skeleton applications for these purposes, but will require substantial compliance with its rules regarding such applications. Briefly stated, these rules provide that the public utility making the application must include therein a general description of its property; a financial statement covering its present financial condition; a statement of the amount and kind of security which it desires to issue, and if the same be preferred stock, the nature and extent of the preference; the use to which the capital to be secured by the proposed issue is to be put, divided specifically into the various purposes mentioned in the statute as quoted above; a description of the property contemplated to be acquired or constructed or improved, and the nature of such improvement or of any proposed extension of facilities, together with all contracts which have been entered into in connection with the same; a statement of the nature of obligations

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³¹ See the Commission's Decision No. 1035, *In re Pacific Light & Power Corp.* to issue bonds (1913) 3 C. R. C. 787, and Decision No. 10,334, *In re Pacific Tel. & Tel. Co.* to issue stock (1922) 21 C. R. C. 522.

³² See *In re Valley Natural Gas Co.* (1917) 14 C. R. C. 798, 800, and *In re Southern Counties Gas Co.* (1922) 22 C. R. C. 740, 742.

or expenditures which it is proposed to discharge or refund or as to which it is proposed to reimburse its treasury; and, unless already filed with the Commission, a copy of the applicant's articles of incorporation, and of any trust deeds or mortgages outstanding against its properties, together with maps and plans of the proposed acquisitions or construction and "detailed estimates in such form that they can be checked over by the Commission's engineering department." All estimates must be arranged according to the Commission's prescribed uniform system of accounts, and in the case of proposed steam or electric railroads, estimate blanks for these purposes are furnished by the Commission.

The second such matter is that, if not convinced that the proposed security issue is necessary, the Commission will deny authority to make the same. In this connection, applicants for authority to issue securities are expected to develop their own cases, and in a recent case the Commission said:

"It is not incumbent upon the Commission's representative to develop an applicant's case. The practice of such applicants to ask their witnesses a few perfunctory leading questions and then dismiss them with the suggestion that if the Commission desires any additional information, let its representative ask the questions, does not meet with the approval of the Commission. We expect an applicant to make such affirmative showing in support of its requests as will warrant the Commission to make the findings it is expected to make, and not impose on the Commission the duty to make such showing either by cross-examination or by direct testimony."³³

A somewhat confusing procedural difficulty which frequently must be faced in connection with securing authority to issue securities is that which involves certain seemingly overlapping jurisdiction as between the state Corporation Commissioner and the Railroad Commission.³⁴ This applies particularly to applications for authority to issue securities on behalf of new corporations which contemplate entering upon public utility business. Most corporate articles of incorporation are now drawn to include the power to engage in many lines of business, including usually some types of public utility enterprise, but where there is no present intent to enter such

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³³ See *In re Great Western Power Co.* (Dec. 3, 1926) 29 C. R. C. 10, 13.

³⁴ See *In re Union T. Warehouse Co.* (1921) 20 C. R. C. 157; *In re Delta Warehouse Co.* (1921) 20 C. R. C. 289; *In re Pickard* (1926) 27 C. R. C. 481; *In re United Parcel Service* (1926) 28 C. R. C. 141; and *In re Stafford M. & W. Co.* (1926) 28 C. R. C. 819.

field it is evident that the authority for proposed financing operations should ordinarily be had from the Corporation Commissioner. The Railroad Commission has, however, taken the position that it must and will assume jurisdiction to authorize and control the issuance of securities by new corporations which intend immediately to enter upon public utility operations, but because of certain decisions of the California Supreme Court,³⁵ a seeming conflict of jurisdiction is presented where the corporation in question has not yet actually commenced or attempted to commence the exercise of such powers.

In view of this difficulty, there has existed for some years a "working agreement" between the Railroad Commission and the Corporation Commissioner to the effect that if applications are made to the latter and it appears that the purpose of the new corporation is, in fact, to engage immediately in public utility business, the Corporation Commissioner will defer action upon the matter until the Railroad Commission has either issued its own order or has expressed its wishes to him, in which event his order will generally follow the expression of opinion which the Railroad Commission has made. It has, therefore, been the opinion of certain members of the Bar that in such instances, applications should be made to both state departments, each being advised that application is also being made in the other department, in order that proper co-operation may be had. It is possible that this situation may at some time be cured by legislation, but this has not yet been done.

Fees, provided by statute and varying with the size of the proposed issue, are collected by the Commission for orders authorizing the issuance of bonds, notes, or other evidences of indebtedness. These fees do not apply to cases involving the guaranty, taking over, refunding, discharging or retiring of any bonds, notes or other evidences of indebtedness on which a fee has already been paid to the Commission, nor to cases in which the Commission has modified the amount of the issue requested and the applicant elects not to go forward with it.³⁶ All orders authorizing the issuance of securities are purely permissive in character, and no mandatory power has been given the Commission to require public utilities to finance their operations in any particular manner.

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³⁵ Notably that of *Del Mar Water, Light & Power Co. v. Railroad Commission* (1914) 167 Cal. 666, 140 Pac. 591, in which it was declared that mere powers granted by articles of incorporation to engage in public utility business do not, without more, bring the corporation in question within the category of a public service corporation.

³⁶ Public Utilities Act, § 57.

EVIDENCE

Operating as it does as an administrative body with a staff of experts to advise it upon technical matters, the Railroad Commission does not follow or apply many of the rules of evidence commonly applied to testimony offered in proceedings before courts of law.³⁷ Its aim is to ascertain the facts in the most expeditious manner possible, regardless of technicalities, and it is provided in the statute under which it operates that in the conduct of its proceedings "the technical rules of evidence need not be applied," and also that "no informality in any hearing, investigation or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission."³⁸

While the strict rules of evidence are not followed by this body, it is to be noted that it enforces the usual rules as to burden of proof;³⁹ that it cannot act upon its general information without evidence, and equally that it does not welcome testimony not reasonably pertinent to the subject-matter of proceedings before it and will refuse to allow its records to be cluttered by irrelevant material. Hearsay testimony is not excluded as such, since a strict application of the "hearsay rule" would render difficult if not impossible the obtaining of requisite information on the technical features of many matters before it. Thus, witnesses are frequently allowed to testify as to information obtained from other persons, and litigants are not ordinarily required to comply strictly with the usual rules, even in relation to oral testimony as to documentary matters.

As to these problems, the Commission takes upon itself the duty of giving to the evidence adduced before it the weight which it—as a body presumptively expert in its field—may deem such evidence to deserve. The stricter rules which properly hedge such matters in jury trials are felt not to be applicable to its operations, and it seeks to ascertain the facts in matters brought before it by such logical and relevant means as appear reasonably calculated in the particular proceeding to bring forth the truth. This is, after all, the chief end in view, and amid the complex and pressing problems

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³⁷ In this connection see F. A. Ross, *Rules of Evidence Before Commissions* (1923) 36 *Harvard Law Review*, 263.

³⁸ *Public Utilities Act*, § 53; *Ghriest v. Railroad Commission* (1915) 170 Cal. 63, 148 Pac. 195.

³⁹ It has been held by the California Supreme Court that the burden is upon a public utility in rate cases "to show the existence of any value claimed by it." *San Joaquin L. & P. Co. v. Railroad Commission* (1917) 175 Cal. 74, 165 Pac. 16.

of modern industrial development, administrative bodies of this type have been literally forced to disregard the more rigid rules of earlier tribunals. For example, a consideration of the list of "exceptions" to the hearsay rule, and the many "exceptions" to these "exceptions," discloses in how many instances that rule has proven inapplicable even in courts of law. It is evident that before such a tribunal as the Railroad Commission—faced as it is with intricate problems of administration, valuation, rate-making and the like, and manned as it is with a staff of experts trained to weigh evidence dealing with their particular subjects and to appraise it at its true value—the enforcement of such a rule would not only intolerably hamper and encumber the work of this body, but would render almost impossible the attaining of the end of continuous regulation for which it has been erected.

In addition to those matters as to which courts of law ordinarily take judicial notice, it is the practice of the Commission to take notice of its own decisions.⁴⁰ Moreover, when precisely specified by any litigant before it, the Commission will take notice of items in tariffs and in annual or other periodical reports of public utilities or other persons under its jurisdiction which are properly on file with it or are included in the annual, statistical or other official reports of the Commission.⁴¹ Documentary evidence must be submitted prior to the close of testimony in any proceeding, and must be prepared in form substantially complying with the Commission's rules. If the material in question is embraced in a book or document containing other material it must be specifically designated and marked for identification. Such material may also be read into the record or, if so directed, true copies may be filed as exhibits. Copies of such documents and of all other exhibits must be given to all parties to the proceeding in question.

It is not necessary for any party to note a formal exception to a ruling of the Commission or of any commissioner or examiner upon the inclusion or exclusion of testimony, and the mere making of objection, shown in the record, is sufficient to bring the matter to issue if it should become relevant upon any appeal from the Commission's decision in the proceeding.

The Supreme Court, in its exercise of its limited jurisdiction to review decisions of the Railroad Commission, will not, however,

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⁴⁰ See *In re Golden Gate Ferry Company* (1926) 28 C. R. C. 638, 640.

⁴¹ Rules of Procedure, XI, (1). See also *Bay Point etc. R. Co. v. A. T. & S. F. Ry. Co.* (1912) 1 C. R. C. 809, 811.

attempt to set aside or reverse such decisions on account of errors in the admission or rejection of evidence, unless the action of the Commission has been of so arbitrary a character as to amount to a denial of due process of law.⁴² In this connection it should also be noted that the Commission may limit the scope of a proceeding before it so as to exclude consideration of issues which it considers extraneous, and may refuse to hear testimony upon such issues. Thus, it has been held that in a rate case the Commission may exclude testimony otherwise pertinent where it purposes in another proceeding to consider the matters so excluded.⁴³ Moreover, the mere reception of testimony in a manner not strictly in accord with the ordinary rules of evidence has definitely been held not to be a ground for annulling an order of this Commission.⁴⁴

MISCELLANEOUS MATTERS RELATING TO PROCEDURE

The main offices and headquarters of the Railroad Commission are in San Francisco, but it maintains a branch office in Los Angeles, in charge of one of its examiners. Representatives of each division of the engineering department and an employee from the department of finance and accounts are permanently stationed at that office, together with an assistant secretary in charge of a small clerical force. All documents required to be filed with the Commission, including formal and informal complaints, may be filed at either office, though the official files and docket are kept at San Francisco.

As above stated, the Commission's Rules of Procedure provide in detail the number of copies of all documents which must be filed in any formal proceeding. All fees are payable in cash at the time they become due, the most important fee not already mentioned being that of fifty dollars required by statute to accompany applications for certificates of public convenience and necessity to render automotive stage or truck service.⁴⁵

Documents which the Commission itself serves upon any person may be served by it either by registered mail or in the manner provided by the Code of Civil Procedure.⁴⁶ It is the Commission's

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⁴² *Brewer v. Railroad Commission* (1922) 190 Cal. 60, 210 Pac. 511.

⁴³ *Saunby v. Railroad Commission* (1923) 191 Cal. 226, 215 Pac. 904.

⁴⁴ *Williamson v. Railroad Commission* (1924) 193 Cal. 22, 222 Pac. 803.

⁴⁵ Auto Stage and Truck Act, § 5, as amended by Stats. 1927, ch. 64,

p. —.

⁴⁶ Public Utilities Act, § 60.

practice to serve documents by registered mail wherever practicable, though in certain instances—such as the service of orders which may be made the basis of contempt proceedings, and orders to show cause in proceedings for the fixing of just compensation for condemnation or sale—the more formal method is used.

Briefs are frequently allowed to be filed in formal matters, and occasionally they are required to be filed in order to assist the Commission in its work. Extensions of time for filing briefs will not ordinarily be granted, and in all instances applications for such extension of time must be made in writing directly to the president of the Commission, who is empowered to act finally on such requests. The Commission does not require that pleadings or briefs be printed, although parties may file printed briefs if they so desire. All briefs should carefully set out the particular facts involved, together with a brief argument as to their application, or as to the law believed to be applicable to the point in question. Citations should be given in full, and wherever possible those portions of cases or documents to which attention is desired to be called should be quoted. The Commission does not welcome extensive briefs, it being its position that the essential matters involved in proceedings before it can ordinarily be expressed in reasonably short form.

The Commission has promulgated special rules and regulations, including forms in many instances, for the filing of annual reports, of rates, rules and regulations and of contracts for special service or for deviations for cause from regularly filed rates. Such rules, and forms when prescribed, are available at the Commission's office, a small fee being charged in certain cases to cover the cost of printing. In the case of a number of types of public utility enterprises the Commission has provided that books of account shall be kept under definite and prescribed uniform classifications.⁴⁷ Pamphlets dealing specifically with such prescribed classifications of accounts are also available at the Commission's office upon the payment of fees similarly calculated.

The question as to the nature of the Railroad Commission's jurisdiction in the case of transfers of public utilities or their operative properties arose soon after it commenced to function in

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⁴⁷ See *In re Suisun and Green Valley Tel. Co.* (1922) 22 C. R. C. 322, 324; *In re Uniform Classification of Accounts for Carriers by Water* (1922) 22 C. R. C. 561; for *Electric Utilities* (1922) 22 C. R. C. 641 and (1925) 27 C. R. C. 201; for *Telephone Companies* (1923) 23 C. R. C. 520, 522; for *Electric Railways* (1923) 23 C. R. C. 634, 637; for *Gas Corporations* (1923) 23 C. R. C. 964 and (1925) 27 C. R. C. 201.

a case in which the state Supreme Court declared that mandamus would not lie to compel the Commission to authorize the consummation of a contract for the sale of a water system where the owner of the system no longer desired to sell and urged that such authority ought not, in the public interest, be granted.⁴⁸ The Commission's jurisdiction concerns only the question of whether a willing seller should be allowed to sell his system. It has no authority to adjudge contract rights, nor can it force an owner of a public utility to sell the same. However, in the interest of proper and continued public utility service, the Commission does concern itself in such cases with the character and financial ability of the proposed purchaser, and its rules require that both seller and purchaser shall join in the application to it for authority to transfer.⁴⁹

All rates, fares, tolls, rentals, and like items charged or proposed to be charged or collected by any public utility, together with all contracts and rules or regulations relating to its service, must be filed with the Commission.⁵⁰ New rates and rates for new or distinct classes of service, as well as such changes in rates as do not result in increases, may be placed in effect by merely filing them, in which event the proposed rates go into effect thirty days after filing, unless such time be shortened by Commission order.⁵¹ The Commission may suspend the effect of such proposed rates for a specified period in order that an investigation may be made, and the statute is specific that no increase in rates or charges, whether direct or indirect may be effected save upon a showing before the Commission and upon a finding by it that such increase is justified.⁵² The statute does not define the type or the degree of proof necessary as a foundation for such a finding, but the Commission has taken the position that the burden is upon the utility desiring to increase its rates, or any of them, and will deny such an application unless this burden be fully sustained.⁵³

Documents and information filed with the Railroad Commission

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⁴⁸ *Hanlon v. Eshleman* (1915) 169 Cal. 200, 146 Pac. 656.

⁴⁹ Rules of Procedure, V, (1).

⁵⁰ See *In re Sidney Smith* (1925) 26 C. R. C. 359, 361; Public Utilities Act, § 14.

⁵¹ Public Utilities Act, §§ 15 and 63b.

⁵² Public Utilities Act, § 63a. See *In re Pacific Gas & Electric Co.* (1913) 3 C. R. C. 583; *In re Central California Gas Co.* (1913) 3 C. R. C. 1008; and *In re Escalon Water & L. Co.* (1925) 26 C. R. C. 673, 676.

⁵³ See *In re No. Calif. Power Co.* (1912) 1 C. R. C. 315, 320; *In re Southern Pacific Co.* (1914) 5 C. R. C. 369, 375; *In re Monticello S. S. Co.* (1919) 17 C. R. C. 426, 432; *In re Pac. Elec. Ry. Co.* (1919) 17 C. R. C. 531, 534; and *In re A. G. Richardson* (1922) 21 C. R. C. 923.

by public utilities (except those required by statute to be open to the public) are declared not to be subject to public inspection save upon specific order of the Commission or by the order of a commissioner in the course of a hearing or proceeding, and it is made a misdemeanor for any officer or employee of the Commission to divulge any such information.⁵⁴ This provision of the statute has at times been the occasion of some misunderstanding, but when it is considered that this Commission is engaged in the continuous administration of regulation over several thousand public utility enterprises, many of which are actively competing one with another, it will be understood that it must frequently seek information for its own purposes which, though properly available to it to assist it from the point of view of its public duty of regulation, should not in the nature of things otherwise be made public.

In this connection it should also be mentioned that the Railroad Commission requires each utility under its direction to furnish reports of all accidents which may occur on its system, under the provisions of the statute requiring the Commission to investigate the causes of such accidents for the purpose of securing and furthering the safety of the public and of the employees and patrons of public utilities. It is evident that the underlying purpose of these provisions is not to make or enforce penalties for past derelictions, but rather to make possible the promulgation of proper rules and regulations for the prevention of future accidents. To this end it is necessary for the Commission and its staff to maintain with the utilities in question the closest co-operation in seeking the causes of such accidents as may happen. If such information were

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⁵⁴Public Utilities Act, § 29d.

Those matters which the Commission has, by General Order, made subject to public inspection are as follows (General Order No. 66):

1. Complaints and information furnished in connection therewith.
2. Applications and information furnished in connection therewith, unless at the time of filing the same the applicant specifically requests that such information or designated portions thereof be not open to public inspection, whereupon the Commission will take such action on such request as it may deem expedient.
3. The annual report of public utilities.
4. All tariffs and rate schedules of public utilities.
5. All maps, profiles, station plats, drawings and inventories furnished by public utilities.
6. All information furnished in compliance with the general orders or resolutions of the Commission, unless at the time of filing the same the public utility specifically requests that such information or designated portions thereof be not open to public inspection, whereupon the Commission will take such action on such request as it may deem expedient.

See also Public Utilities Act, §§ 42 and 44.

open to the public, and if the reports made to the Commission by its staff upon its own investigation or by the utility itself were open to all persons, including particularly those who might desire to bring actions for damages against the utility because of such accidents, it would be impossible for the Commission readily to obtain the accurate and complete information which the public interest requires it to seek. It is, therefore, provided in the statute that "neither the order or recommendation of the Commission nor any accident report filed with the Commission shall be admitted as evidence in any action for damages based on or arising out of the loss of life, or injury to person or property" occasioned by any such accident and the Commission has consistently refused to grant public access to accident reports of utilities or reports of investigations of such accidents filed with it by its staff or otherwise. The result has proven the wisdom of this action, and the utilities of the state recognize that the Railroad Commission is seeking in these matters the future protection of the public, and is not serving any selfish interest. In the Commission's opinion, the co-operation thus made possible has proven of great benefit to the general public, through the prevention of accidents and the amelioration of dangerous conditions whenever and wherever discovered.

Pursuant to provisions of the statute empowering and requiring it to promulgate rules and regulations applicable to public utilities generally, or to specified classes of utilities, the Commission has issued a number of general orders. These general orders are as much a part of the background of regulation as exercised by the Commission as is the Public Utilities Act itself, and should be given careful consideration by any one operating a public utility or practicing before the Commission. Among them may be mentioned particularly several orders dealing with the method and form of filing rates and rules and regulations with the Commission. Other important general orders include those requiring that public utilities may not withdraw wholly or in part from public service without the Commission's consent (General Orders Nos. 27, 36 and 48); requiring that all contracts for public utility service must contain a provision to the effect that they are subject to change or modification by the Commission (General Order No. 53); regulating the clearances at railroad crossings (General Order No. 26c); requiring certain records of public utilities to be preserved (General Order No. 28); requiring types of construction calculated to prevent or mitigate inductive interference between electric power and communication lines (General Order No. 52); providing standards of construction for electric

power line construction (General Order No. 64); requiring automotive stage lines to own or lease the equipment used by them in their service (General Order No. 67); providing standards of pavement construction at railroad grade crossings (General Order No. 72), and providing standards for the protection of such crossings (General Order No. 75). These general orders are published and are available at the Commission's office, a small fee being charged for copies of certain of the more extensive ones.

The Commission is required annually to submit to the Governor a report setting forth an account of its transactions and proceedings during the preceding fiscal year. These reports contain detailed information concerning the Commission and its work, as well as statistics and information of divers types regarding the public utilities under its jurisdiction. The Commission also prints and sells to the public copies of all formal orders and opinions, save those of a minor character not considered of sufficient importance to be published. These are available either individually in pamphlet form or bound in volumes each containing a number of decisions. These volumes are serially numbered, and citation of published Commission decisions is by reference to such volumes—as 21 California Railroad Commission Decisions, 473, usually written 21 C. R. C. 473. There are now (1927) more than 18,000 formal decisions, and twenty-seven such bound volumes of reports.

It is unfortunate that no digest of these formal decisions of the Commission exists. A digest of decisions of public utility regulatory bodies throughout the United States, which includes many important decisions of the California Railroad Commission, and which has been published in connection with the set of volumes known as "Public Utility Reports, Annotated," is available but not wholly satisfactory, since the classification is somewhat difficult to follow. At this time, it is the only digest of this nature available to the bar. A complete digest of the Railroad Commission's decisions is, however, in the process of preparation under the direction of the Commission's attorney, and upon completion will probably be published for sale to all interested persons.

The Commission has also had prepared a digest of those decisions of the California Supreme Court and of the federal courts in cases to which it has been a party or which directly involve its jurisdiction or action. This work will soon be published, and should prove to be of considerable value to those members of the bar whose practice brings them frequently before the Commission or before the courts in connection with cases arising out of Commission proceedings.

Members of the bar have occasionally overlooked that section of the statute which provides that no foreign corporation, other than one which at the time of the enactment of the Public Utilities Act was entitled to transact a public utility business in California, may enter upon or transact such business in this state. An exception exists as to foreign corporations engaged in interstate or foreign commerce, which may transact similar business here, but no permit or franchise may be granted to any foreign corporation now desiring to commence a purely intrastate public utility enterprise.⁵⁵ This provision was presumably enacted in aid of the valid public purpose of keeping as complete control as possible over public utility businesses in California, and particularly over their financing and accounting. No rates or applications will be filed or acted upon by the Railroad Commission if offered by a corporation so debarred, and it has further taken the position that it will not grant certificates of public convenience and necessity for automotive stage or truck enterprises to foreign corporations.⁵⁶

REHEARING

At any time before the effective date of any formal order of the Commission in any of the proceedings above referred to, any party, or any stockholder or bond holder or party pecuniarily interested in the affected public utility may apply for a rehearing of the matters contained in such order.⁵⁷ This petition must specifically point out the propositions as to which the decision is considered to be unlawful, and no grounds not so set forth may later be urged or relied upon in any court.⁵⁸ While no petition for rehearing will be received or

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⁵⁵ Public Utilities Act, § 26. See *In re Richmond-San Francisco Transportation Co.* (1923) 24 C. R. C. 257, and *In re Harbor Tug and Barge Co.* (1925) 27 C. R. C. 372, 374.

⁵⁶ This has now become the statutory rule. See Cal. Stats. 1927, ch. 64, p. —.

⁵⁷ It is provided by statute that no action arising out of any order or decision of this Commission shall accrue in any court unless such a petition for rehearing shall have been filed before the effective date thereof. Public Utilities Act, § 66. In the case of matters arising upon complaint such effective date is declared to be twenty days after the service of the order in question upon the affected public utility. Public Utilities Act, § 61a. As to matters arising upon application no such statutory provision exists, but the Commission has by rule provided that in such matters, unless otherwise declared in the decision or order in question, the effective date of any order shall be twenty days after its rendition. Rules of Procedure, X, (8). See in this connection *Clemmons v. Railroad Commission* (1916) 173 Cal. 254, 159 Pac. 713.

⁵⁸ See *City of San Leandro v. R. R. C.* (1920) 183 Cal. 229, 191 Pac. 1, and *Postal Telegraph-Cable Co. v. R. R. C.* (1925) 197 Cal. 426, 241 Pac. 81.

considered by the Commission if filed subsequent to the effective date of the order in question,⁵⁹ on certain occasions, where good cause has appeared for such action, it has extended the effective date of a decision in order that petition for rehearing might be filed. It has been its position, however, that it possesses no power so to extend any such effective date after that date has passed.⁶⁰ The only remedy of any party who has failed to apply for a rehearing prior to the effective date is to petition the Commission to exercise its purely discretionary power to reopen and reconsider matters which have been before it. This may be accomplished by formal order after hearing upon due notice to the affected utility.⁶¹ That the Commission is loath to exercise this drastic power merely to aid one who has slept upon his rights goes without saying, but it has done so in certain cases where it has deemed the matters in question to be of sufficient public import to warrant the use of this procedure calculated to make possible their presentation to the courts.

The filing of a petition for rehearing does not of itself, stay or render ineffective the order of the Commission against which it is directed—except in cases where the petition is filed ten days or more before the effective date of such order, in which event the order, by statute, stands suspended “until such application is granted or denied.”⁶² If the application is filed less than ten days before the effective date there is no such automatic stay, but if an application so filed be not granted within twenty days after its filing the party making it may, at his option, take it to have been denied, unless the Commission has meanwhile extended the effective date of the order for the period of the pendency of the application—thereby of its own motion staying the enforcement of its order. This right to deem such a petition denied in the event the Commission does not direct a stay of its order is given in order to prevent the injustice which would result to a litigant if his petition for rehearing were not acted upon within a reasonable time, the order meanwhile going into and remaining in effect. There is no statutory provision requiring action by the Commission upon any petition for rehearing within any given time, except that it is provided that if a petition for rehearing be granted without any suspension of the effect of the

⁵⁹ See *In re North Fork Ditch Co.* (1916) 10 C. R. C. 52.

⁶⁰ See *Los Angeles & Bakersfield Fast Freight Co. v. Mike Lang et al.* (1927) Decision No. 18,085, March 21, 1927.

⁶¹ Public Utilities Act, § 64.

⁶² See *In re Pacific Electric Ry. Co.* (1918) 16 C. R. C. 243.

order in question the Commission shall proceed to hear the matter "with all dispatch," and shall determine it "within twenty days after final submission" or any party to the rehearing may take the order to have been affirmed.⁶³

If a petition for rehearing is granted it is set down for hearing before the Commission or a commissioner or examiner, and upon the convening of such hearing all parties to the proceeding may appear and present testimony or argument relating to the matters included in the petition. Where legal questions alone are raised, the Commission instead of granting or denying the petition itself, frequently directs a hearing for the purpose of listening to argument upon the matters so presented. No new evidence may be presented at such argument, but all parties may appear and present orally the matters called in question by the petition, after which the Commission issues its order upon said petition.⁶⁴ After any rehearing, the Commission issues its order, either affirming or abrogating its prior order, or modifying the same if such modification is deemed proper. Indeed, where such action seems requisite, the Commission frequently directs modification of its earlier decision in its order denying rehearing.

An order made after any rehearing abrogating, changing or modifying the original order or decision possesses the same force and effect as an original order, but it is specifically provided in the statute that such an order made after rehearing shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the Commission.⁶⁵

APPEAL AND REVIEW

The framers of the Public Utilities Act were particularly anxious to avoid useless and unwarranted hampering of the Railroad Commission's efforts by such harassing litigation as had rendered difficult

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⁶³ This provision is merely "directory" as far as the Commission or the validity of its order on rehearing is concerned. It authorizes all parties, pending final decision, to act without fear of penalty on the assumption that the original order is affirmed. See *Mt. Konocti Light & Power Co. v. Thelen* (1915) 170 Cal. 468, 150 Pac. 859.

⁶⁴ Such procedure was held to be proper in *Mt. Konocti Light & Power Co. v. Thelen*, *supra*. The argument on the question of rehearing in such proceedings is frequently considered, for purposes of procedure, as the rehearing itself, in case the matters presented would otherwise have warranted a rehearing. See *Cole v. So. Feather L. & W. Co.* (1915) 6 C. R. C. 121; *Coalinga v. Pleasant V. W. Co.* (1915) 8 C. R. C. 709; *Dairyman's Ass'n. v. Wells-Fargo Co.* (1915) 8 C. R. C. 53.

⁶⁵ Public Utilities Act, § 66.

the work of many earlier bodies of like nature. They therefore provided that no court except the state Supreme Court should have jurisdiction "to review, reverse, correct or annul any order or decision of the Commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties."⁶⁶ As to the Supreme Court, it was provided that the writ of mandamus would lie against the Commission in proper cases,⁶⁷ and a complete mechanism was set up for the consideration of Commission decisions under writs of certiorari or review.

At any time within thirty days after action by the Commission denying any application for rehearing, or after the issuance of a final decision pursuant to a rehearing, or in a case where an applicant for rehearing—in the peculiar instance above mentioned—deems his application denied for want of action by the Commission, a petition for writ of certiorari or review may be filed in the state Supreme Court. That court considers the petition and any answer thereto which the Commission may file,⁶⁸ and either grants or denies such writ, or directs the Commission to show cause on a date certain why it should not be granted.⁶⁹

If upon the petition, or after hearing upon such order to show cause, the writ be granted, it is made returnable upon a date certain,

⁶⁶ See *Sexton v. A. T. & S. F. Ry. Co.* (1916) 173 Cal. 760, 161 Pac. 748; *People v. Hadley* (1924) 66 Cal. App. 795, 226 Pac. 841; *Truck Owners & Shippers, Inc. v. Superior Court* (1924) 194 Cal. 146, 228 Pac. 19; and *Glenn-Colusa Irrigation Dist. v. Paulson* (1925) 75 Cal. App. 57, 242 Pac. 494.

⁶⁷ The use of mandamus proceedings to obtain speedy judicial determination of important legal questions involving the Railroad Commission has been approved by the state Supreme Court in a number of decisions. Such cases as already mentioned hereinabove ordinarily arise where the Commission's jurisdiction is questioned, and that body—in order to make possible immediate judicial review and to save the cost of a possibly useless hearing—refuses to proceed with the matter and issues its formal order dismissing the proceeding for want of jurisdiction. See, for examples of such procedure, *Civic Center Assn. v. Railroad Commission* (1917) 175 Cal. 441, 166 Pac. 351; *Hollywood Chamber of Commerce v. Railroad Commission* (1923) 192 Cal. 307, 219 Pac. 983; *East Bay Municipal Utility District v. Railroad Commission* (1924) 194 Cal. 603, 229 Pac. 949.

⁶⁸ The rules of the Supreme Court provide that petition for a writ of review shall be served upon the Commission, and that the Commission may, within ten days thereafter, file its answer thereto. It is not mandatory upon the commission to file such answer, but it is customary for it to do so, in order that the essential issues may be presented at the outset.

⁶⁹ The Supreme Court will not review a mere interlocutory decision, nor any order of the Commission which is not final determination of a matter before it. See *Holabird v. Railroad Commission* (1916) 171 Cal. 691, 154 Pac. 831, holding that the Supreme Court will not review an order of the Commission overruling a pleading in the nature of a demurrer which questioned the Commission's jurisdiction.

the Commission being directed upon that date to certify its record to the court. Upon the making of such return the usual procedure is for dates for the filing of briefs to be set, and if any party asks for the privilege of arguing the cause orally the court ordinarily grants such request, fixing the time for oral argument at some date subsequent to that set for the filing of the final brief. Under this statutory procedure, any party to the case before the Commission—whether or not he be formally named as a party or has become such by intervention, or whether or not he be named in the title of the review proceeding—may appear in the Supreme Court and file briefs or orally argue the matter without the necessity for obtaining leave of court to appear. Briefs and argument by other persons are allowed by the court only on petition for leave to appear as *amici curiae*.

So far as applicable and not in conflict with the procedure set forth in the statute, the provisions of the Code of Civil Procedure apply to these review proceedings. It is provided, however, that the review of Railroad Commission decisions is not to be extended further than "to determine whether the Commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California."⁷⁰ No new or additional evidence may be introduced in the Supreme Court, and the case is heard upon the record made before the Commission, including the pleadings, transcript of testimony and exhibits there filed.⁷¹ The findings and conclusions of the Commission on questions of fact are declared to be final and not subject to review, and it is further declared that such questions of fact "shall include

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⁷⁰ Decisions of the Commission on showings by transportation companies regarding proposed rate increases are not subject to review by any court except on the question of confiscation of property. Cal. Const. 1879, Art. XII, § 20. See *City of Santa Monica v. Railroad Commission* (1918) 179 Cal. 467, 177 Pac. 989.

⁷¹ In a number of instances the court has denied petitions for writs of review upon the showing made without requiring the Commission to certify its record to the court. That such an order denying the writ constitutes a final determination upon the issues therein raised was decided in *Napa Valley Elec. Co. v. Railroad Commission* (1919) 257 Fed. 197, affirmed by the United States Supreme Court (1920) 251 U. S. 366, 40 Sup. Ct. Rep. 174. In such a case the record on writ of error to the United States Supreme Court consists only of the petition for writ of review to the state Supreme Court, and such other documents as may have been filed there, and does not include the record made before the Commission. See *Order Denying Motion for Diminution of the Record made by the United States Supreme Court on April 11, 1927, in Miller & Lux, Inc. v. Railroad Commission* (No. 756, October Term 1926).

ultimate facts and the findings and conclusions of the Commission on reasonableness and discrimination."⁷²

The operation and effect of the Commission's order is not, however, stayed or suspended merely by the pendency of a proceeding under a writ of review, and special machinery for obtaining a stay of any such order is provided by the statute.⁷³ Petition for such a stay must be made to the court, which may act thereon only after a special hearing after three days' notice to the Commission. No stay may become effective until a suspending bond shall have been executed, and filed with and approved by the Commission. The deposit of any moneys that may be in question in such proceeding is also specifically required, and the Commission is empowered to require special verified accounts to be made showing all sums collected in excess of the charges allowed in the Commission's order. Proceedings to review decisions of the Railroad Commission are, by statute, given preference before the state Supreme Court over all other causes, except election causes, and are to be heard and determined in accordance with such preference, irrespective of position on the calendar.⁷⁴ Upon the hearing of any review proceeding the Supreme Court must enter its judgment either affirming or setting aside the order or decision of the Commission.

In this connection it may not be amiss to suggest that the mechanism thus set up for the review of decisions of the Railroad

⁷² The court has drawn a distinction between findings of fact made by the Commission in relation to general matters within its undoubted jurisdiction and findings of fact upon questions which relate to matters involving that jurisdiction itself—i.e., matters of fact, the existence of which is essential to confer jurisdiction. Findings of the former type are held to be final and conclusive upon the court, *Live Oak Water Users' Assn. v. Railroad Commission* (1923) 192 Cal. 132, 219 Pac. 65. Findings of the latter type are, however, held reviewable by the court, although if they are based upon evidence of a substantial character sufficient to justify the inference or conclusion that the facts in question do exist, they will be sustained. *Traber v. Railroad Commission* (1920) 183 Cal. 304, 191 Pac. 366, and *Samuel Edwards Associates v. Railroad Commission* (1925) 196 Cal. 62, 235 Pac. 647. See also *Holabird v. Railroad Commission* (1916) 171 Cal. 691, 154 Pac. 831; *Limoneira Co. v. Railroad Commission* (1917) 174 Cal. 232, 162 Pac. 1033; *Allen v. Railroad Commission* (1918) 179 Cal. 68, 175 Pac. 466. For discussion of the status of decisions of the Railroad Commission under the doctrine of *res judicata* see *Stratton v. Railroad Commission* (1921) 186 Cal. 119, 198 Pac. 1051; and *Motor Transit Co. v. Railroad Commission* (1922) 189 Cal. 573, 209 Pac. 586.

For a scholarly discussion of the underlying factors of this situation see Dickinson, *Administrative Justice and the Supremacy of Law* (1927).

⁷³ Public Utilities Act, § 68.

⁷⁴ It is also provided that similar preference shall be granted upon application of the attorney of the Commission in any action or proceeding in which he may be allowed to intervene. Public Utilities Act, § 69.

Commission has, in practice, proven itself generally satisfactory to the Commission and to the utilities of the state as well as to the bar. This mechanism has made possible the procuring of judicial determinations as to such questions as may be involved in such proceedings with a celerity usually foreign to appellate practice. Indeed, it is suggested that many cases which are now brought before appellate courts under the conventional appellate procedure could be handled by the use of such a mechanism more efficiently and with at least as much essential justice to all of the parties concerned as they are under the existing system. If the simplification of legal practice be an end worthy of consideration—and it is submitted that it is—the adoption of certiorari or review procedure for present appellate practice might well be a real step in the desired direction.

It is, of course, true that many members of the bar have been disappointed in cases in which petitions for writs of review filed by them have been denied, and it is possible—even probable—that the courts might occasionally err either in refusing to grant such writs upon the showing made or might err in arriving at the decision finally rendered upon a review. But it is equally possible for courts to err under the present cumbersome methods, and few would urge them to be infallible, even in cases where long periods of time have elapsed and complete records have been brought before them. If answers to petitions for writs of review were to be permitted, thus bringing the essential issues of law to the attention of the higher tribunal at the very outset, it seems quite probable that errors in justice would be no more likely to result under this simplified method than under the present weighty machinery and time-consuming practice.⁷⁵

In this connection, attention is directed to the recent amendments to the rules of the United States Supreme Court in connection with petitions for writs of error directed to inferior tribunals, and to the statutes recently enacted concerning such petitions. These rules

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⁷⁵ As above mentioned, under a rule of the California Supreme Court adopted in 1926 it is provided that petitions for writs of review shall be served upon the Railroad Commission by the party seeking the writ, after which the Railroad Commission is allowed ten days in which to reply if it so desires. Thus the essential issues are raised and brought squarely to the attention of the court within ten days after the initiation of the proceeding before that tribunal. Since the denial of a writ of review has been held to be a final determination upon the matters involved (*Napa Valley Elec. Co. v. Railroad Commission*, *supra*, n. 71) this would seem to be the quickest possible method of obtaining a final judicial decision upon a disputed point of law.

and statutory provisions were placed in force in order to halt as far as possible the crowding of the docket of the United States Supreme Court with unnecessary writs, and to provide some means of avoiding these unwarranted writs of error under the former obligatory appellate practice of that court.⁷⁶ If the adoption of some such machinery were to result in even the partial clearing of the present crowded dockets of our state appellate courts, it is suggested that the essential ends of justice might thereby be truly subserved. Such action would make possible an extreme simplification of the rules relating to the preparation of records; it would mean the elimination of proceedings intended solely for the purpose of delay, and it would result in a speedy yet essentially accurate and just appellate practice in place of the present conventional and semi-obsolete procedure.

This subject should perhaps not be closed without some mention of certain matters to be kept in mind in any proceedings against the Railroad Commission in the federal courts.

Procedure in those courts to halt by injunction the enforcement of orders of state administrative tribunals, such as the Railroad Commission, is established by the rules of such courts, and by the provisions of the federal Judicial Code. It will therefore not here be discussed in any detail. Attention should be called, however, to the fact that, if a litigant elects to proceed under the provisions of the state statute in the state Supreme Court and there fails, he may not then seek relief by commencing anew in the federal District Court, but may only pursue his remedy by appeal to the United States Supreme Court. This is true even where the state court's only action is the denial of a petition for writ of review, since such a ruling is held to be a final determination in such matter by the state court.⁷⁷

If a litigant elects to proceed *ab initio* in the federal District Court, by application for injunction, the procedure provided in section 266 of the Federal Judicial Code must be followed. This section provides, in effect, that the enforcement of a state statute or the operations thereunder by a state officer or administrative body may not be stayed or enjoined by interlocutory injunction by any federal judicial officer, upon the ground of the unconstitutionality of such statute, unless the application for such injunction be made

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⁷⁶ See in this connection the discussion of the new statute and rules by Chief Justice Taft (1925) 35 Yale Law Journal, 1.

⁷⁷ Napa Valley Electric Company v. Railroad Commission, *supra*, n. 71.

to a justice of the United States Supreme Court, or to a federal circuit or district judge, and be heard and determined by three judges, of whom at least one must be a justice of the United States Supreme Court or a circuit judge. A majority of such special court must concur in granting any such application, and the requirement of the presence of three judges applies also to the final hearing in such action. An appeal lies directly to the United States Supreme Court from the determination made by the special court.

It is, of course, axiomatic that no proceeding will lie in the lower federal courts, nor may a matter be brought before the United States Supreme Court on appeal, unless there is some substantial federal question involved, and unless such federal question has been properly raised before the Commission during the course of the particular proceeding.⁷⁸

CONCLUSION

In conclusion, a recognition of the essential differences between the primal functions of courts of law as contradistinguished from those functions exercised by this administrative tribunal discloses the underlying reasons for the differences in their respective procedure. Looked upon broadly, the chief function of courts of law is to consider and determine controversies between known and specified parties, usually relating to some past act, under rules and principles set forth in statutes or embodied in the common law. The function of hearing and determining controversies between parties (even as to its limited field) is, however, but one—and a relatively minor one—of the Railroad Commission's numerous functions. That body must continuously, and regardless of such individual controversies, administer the provisions of the state Constitution and of the statutes relating to the regulation of public utilities. To this end it must employ a large staff of experts, trained to consider all angles of such regulation, and to render impartial reports upon the problems which constantly arise. It may—and frequently does—initiate proceedings and investigations upon its own motion, and it enters upon many fields of effort requiring continuity of administration and recurrent investigation. It often renders decisions that are legislative rather than judicial in character, and it must make and enforce divers rules and regulations concerning the future conduct of those enterprises which have been subjected to its authority.

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⁷⁸ *Live Oak Water Users' Assn. v. Railroad Commission* (1926) 269 U. S. 354, 46 Sup. Ct. Rep. 149.

It is evident that a body charged with such duties could not function were it harnessed to the common-law rules of evidence, or to those rules as they have been crystallized in the code. Its effort is a continuous and living thing, and the procedure which it has evolved is calculated to free both it and those who came before it from those requirements of court procedure which might in any way hamper its efforts to get at the truth in the most expeditious manner consistent with accuracy. Its rules look therefore to the simplification of traditional procedure; to the elimination of such pleadings or proceedings as are calculated merely to produce delay in the consideration or decision of matters arising before it, and to the abrogation of those rules of evidence which would unnecessarily hinder it, or its presumably expert assistants, from quickly and readily ascertaining the essential facts of any given situation. That expense is thus saved to the state and to litigants before the Commission, and that its efforts toward simplification of procedure have redounded to the satisfaction and profit of those with whom it deals must be clear to all who have given thoughtful consideration to its work and its problems.

Carl I. Wheat.

San Francisco, California.